Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 182

NEWBERRY MILLS, INC., PETITIONER,

versus

UNITED TEXTILE WORKERS OF AMERICA, AFL-CIO, LOCAL UNION NO. 120, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS THE FOURTH CIRCUIT

ALVA M. LUMPKIN, JR.,
ELLISON D. SMITH, JR.,
THOMAS KEMMERLIN, JR.,
JULIUS W. McKAY,
Attorneys for Petitioner,
Columbia, South Carolina.

The R. L. Bryan Company, Legal Printers, Columbia, S. C.

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UNITED TEXTILE WORKERS OF AMERICA, AFL-CIO, LOCAL UNION NO. 120, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS THE FOURTH CIRCUIT

The petitioner prays that a Writ of Certiorari issue to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit, dated and entered in this case on March 6, 1963.

OPINIONS BELOW

The opinion of the District Court (App. 12) is unreported. The opinion of the Court of Appeals (App. 15) is reported at 315 F. (2d) 217.

JURISDICTION

The judgment of the Court of Appeals was entered on March 6, 1963. The suit arose under Section 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. A., Section 185(a).

The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Section 1254.

STATUTORY PROVISION INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. A., Section 185(a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

QUESTION PRESENTED

If an employee without presenting for arbitration the grievance which gave rise to his walkout goes out on strike in violation of a no-strike clause contained in a collective bargaining agreement which also contains an arbitration clause providing for the handling of employee grievances, and is discharged as a result, is he entitled to have his discharge arbitrated under the machinery of the arbitration agreement he chose to repudiate by going out on strike?

STATEMENT

Certain employees of Newberry Mills, Inc., went on strike without presenting the grievances which gave rise to the strike for settlement under the grievance and arbitration procedures set forth in the collective bargaining agree-

ment then existing between the union and the company. This strike was in violation of the no-strike clause of the collective bargaining agreement.* As a result of this strike, the company discharged eighteen of the employees who had gone out on strike.

These eighteen employees remained out on strike in violation of the no-strike clause even though no pickets physically blocked their way, and no violence, coercion, or intimidation was threatened against them. Fifteen of these eighteen employees served actively on a picket line. (See Interrogatories and Request for Admissions and Answers, App. 39-45.)

It is on behalf of these eighteen employees, admittedly participants in a strike which violated the no-strike clause in the collective bargaining agreement between the union and the company that the union filed its complaint seeking to have their discharges arbitrated. Federal jurisdiction was invoked under Section 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. A., Section 185(a).

The complaint alleged that on June 9, 1960, certain employees violated this no-strike clause and "went out on strike, which strike was not authorized by the plaintiff [the union] herein." The complaint further alleged that the company discharged eighteen of these employees (named in the complaint) even though these employees "were not leaders of the strike. * * *" After setting forth the grievance

* Section XVII—"STRIKES AND LOCKOUTS" of the Collective Bargaining Agreement provides:

(a) The term "strike", as herein used, shall include any concerted stoppage or slowdown of work, or other impairments of the Company's production on the part of the employees within the bargaining unit.

During the term of this contract, the Union shall not authorize or support any strike.

(c) Neither the Local Union nor the International Union shall be liable for damages for any strike, under Section 301 of the Labor Management Relations Act of 1947, which neither the Local Union nor the International Union does not authorize or support during the life of this agreement.

and arbitration provisions of the contract, the complaint alleged that the company refused to consider these discharges as grievances, and prayed that the court specifically enforce the grievance and arbitration procedures of the contract and order the company to submit the grievances, *i. e.*, their discharges, of the named employees to an arbitrator.

The answer of the company admitted that it refused to arbitrate the discharges of the named employees and set up, among other defenses, the following defense: The eighteen employees chose to go on strike in violation of the collective bargaining agreement in order to express their grievances rather than to present the grievances which gave rise to the strike to arbitration as required by the collective bargaining agreement, and therefore they have "unclean hands" and are in no position, through their union, to demand the benefit of the very arbitration clause they breached when they went out on a strike in the face of the no-strike clause.

Under these admitted facts the company and the union both made motions for summary judgment, the company's motions seeking to have the complaint dismissed and the union's motion seeking to compel the company to arbitrate the discharges.

The company's motion was denied and the union's motion granted. From the Order granting the union's motion for summary judgment the company appealed to the Court of Appeals for the Fourth Circuit which affirmed the decision of the United States District Court for the Western District of South Carolina.

REASONS FOR GRANTING THE WRIT

The decision herein misinterprets the decisions of this Court. The Court of Appeals based its decision on *Drake Bakeries, Inc., v. Local 50, American Bakery Workers*, 370 U. S. 254 (1962). In that case the employer brought suit

for damages for an alleged breach of the no-strike clause of a collective bargaining agreement. The Union denied any strike had occurred and sought a stay of the suit pending arbitration of the damage claim. In spite of the broad language of the arbitration clause the employer sought to avoid its duty to arbitrate, asserting that the Union by violating the no-strike clause, the *quid pro quo* of the arbitration clause, lost its right to assert the arbitration clause. This Court held under these facts that the employer must arbitrate its damage claim. However, it was pointed out in the decision:

> * * * In determining whether one party has so repudiated his promise to arbitrate that the other party is excused **the circumstances of the claimed repudiation are critically important.** (Emphasis added.) In this case the Union denies having repudiated in any respect its promise to arbitrate * * * 370 U. S. at 263.

and

> We do not decide in this case that in no circumstances would a strike in violation of the no-strike clause contained in this or other contracts entitle the employer to rescind or abandon the entire contract or to declare its promise to arbitrate forever discharged * * * 370 U. S. at 265.

In the *Drake Bakeries case* the Union **for its own benefit** when it was sued for damages for a strike **which it claimed did not occur,** invoked the arbitration clause. In the *Newberry Mills case* the union, **not for its own benefit** but for the benefit of **individuals who admittedly struck in violation of the no-strike clause,** seeks to have these individual's discharges arbitrated. These individuals admittedly have "unclean hands" and it is respectfully urged the *Newberry Mills case* falls within the reservations quoted above in the *Drake Bakeries case.*

The decision herein encourages industrial strife.

Congress, in enacting the National Labor Relations Act of 1935, and the Labor Management Relations Act of 1947, had as its primary purpose the elimination of industrial strife which imperiled the free flow of commerce.

The National Labor Relations Board which is largely charged with the administration of these Acts has as its primary objective the elimination of industrial strife. While these Acts protect employees in their right to engage in concerted action for mutual aid and protection, concerted action in the form of a strike in violation of a no-strike clause in a contract is not a protected activity under the Acts, and employees who engage in such concerted action are subject to discharge. *National Labor Relations Board v. Sands Manufacturing Company*, 306 U. S. 332. Title III of the Labor Management Relations Act of 1947 upon which the Complaint of the union is based in this case cannot be divorced from Title I of this Act which gives no protection to strikers who violate the no-strike clause of a collective bargaining contract. To do so would be to defeat the thrust of the statute which is to eliminate industrial strife which imperils the free flow of commerce. However, this is precisely what the discharged employees wish. They wish to have arbitration of their discharges by an order for specific performance, even though they flagrantly violated the no-strike clause and have unclean hands. To allow relief to employees in these circumstances would be to permit them to take advantage of their own wrongful acts and utilize one section of the Act, Title III, to frustrate another section, Title I.

There is confusion among the circuits on the issues herein presented. After announcing the *quid pro quo* equation of no-strike and arbitration clauses in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, this Court stated:

> We conclude that the substantive law to apply in suits under section 301 (a) is federal law which the courts must fashion from the policy of our national labor laws. 353 U. S. at 456.

The case here presented is one in which this Court should "fashion" substantive law for the guidance of the Courts of Appeal.

In *International Molders Union, Local 239 v. Susquehana Casting Co.*, 283 F. (2d) 80 (3d Cir. 1960), the Court of Appeals for the Third Circuit relying upon what the court took to be the teachings of this Court in the *Steelworkers cases*, 363 U. S. 564 *et seq.* held that a strike in violation of the no-strike clause did not defeat the Union's application for an order to arbitrate the discharge of employees for engaging in the strike.

In *Portland Web Pressmen's Union v. Oregonian Publishing Co.*, 286 F. (2d) 4 (C. A. 9, 1961), the Court of Appeals, Ninth Circuit, had before it this same question, but decided the case on other grounds, expressly refusing to rule on the question of whether a strike in violation of the no-strike clause barred the Union in a suit for specific performance for arbitration of employee's discharges resulting from these employees' participation in the strike. The District Court had in the same case, *Portland Web Pressmen's Union v. Oregonian Publishing Company*, 188 F. Supp. 859 (S. D. Ore., 1961), held that employees who struck in violation of the no-strike clause were not entitled to have their resulting discharges arbitrated:

> Without question, the obligation of the plaintiff and its members to continue work was required as one of the steps in the grievance procedure. Full performance of Section 5 (no-strike clause) of the contract is a requisite to a demand for performance under Section 4. (Grievance and arbitration processes.) *Cameo Press v. Kokomo Paper Handlers' Union, supra; Peoples v.*

Southern Pacific Co., supra. The plaintiff cannot ignore the portion of the grievance procedure under which it is obligated and at the same time require performance by defendant of another requirement of the same procedure. *Cunco Press v. Kokomo Paper Handlers' Union, supra; Peoples v. Southern Pacific Co., supra; Textile Union Workers v. Lincoln Mills, supra.* 188 F. Supp. at 867.

The Courts of Appeals need guidance on the *quid pro quo* equation as it applies to employee grievances for discharges arising out of strikes in violation of no-strike clauses.

The decision herein fails to consider the petitioner's defense of "unclean hands", even though the suit is one in equity for specific performance. While the courts are not bound to traditional concepts of contract law in fashioning a body of substantive law to apply to suits under section 301 (a), petitioner does not believe this Court has abandoned completely the common law in 301 (a) suits. The suit here before the Court is one for specific performance in equity. The employees on whose behalf relief is sought by the Union admittedly have unclean hands, *i. e.*, these employees struck in violation of the no-strike clause even though there was an arbitration procedure under which they could express their grievances. Under the "unclean hands" doctrine traditionally applied by equity courts these employees are entitled to no relief.

Under the allied common law concepts of (a) failure of consideration (if a no-strike clause is the *quid pro quo* for the arbitration clause), (b) waiver and estoppel, and (c) breach of condition justifying recission, *i. e.*, the employees failed to observe the implied condition precedent to arbitration, staying on the job and not striking, these employees are not entitled to relief.

CONCLUSION

With rights (arbitration for employee grievances) go duties (among them the duty not to strike). For the reasons set out above, this petition should be granted.

Respectfully submitted,

ALVA M. LUMPKIN, JR.,
ELLISON D. SMITH, JR.,
THOMAS KEMMERLIN, JR.,
JULIUS W. McKAY,
Attorneys for Petitioner.

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This is a suit brought by plaintiff Union for specific performance of the arbitration agreement contained in its collective bargaining agreement with defendant (Newberry Mills). The Union seeks arbitration of the question of whether or not eighteen of its members were lawfully discharged as the result of a "wildcat strike." The suit arises under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185 and under the Federal Declaratory Judgment Act, 28 U. S. C. A. 2201 and 2202. Newberry Mills by way of answer has set up a counterclaim seeking damages against the Union for violation of the no-strike clause of the collective bargaining agreement. The Union seeks dismissal of Newberry Mills' counterclaim for the reason that it raises questions which the Union seeks to arbitrate. Both the Union and Newberry Mills have moved for summary judgment on the Union's complaint.

FINDINGS OF FACT

On June 9, 1960, certain employees of Newberry Mills engaged in a strike. As a result of this action, eighteen employees of Newberry Mills were discharged. Newberry Mills alleges that the strike was in violation of the collective bargaining agreement's no-strike clause. The Union alleges that the strike was not authorized by it and that it attempted and ultimately did induce the employees to return to their jobs.

The collective bargaining agreement contained this provision as to arbitration:

> "Grievances arising out of the operation and interpretation of this agreement involving wages (other than general wage increase or decrease proposals as provided for in Section X) hours, or other conditions of employment shall be presented within five (5) working days of the time the aggrieved party has notice or knowledge of the event giving rise to the grievance, or being reasonably charged with knowledge of the event, and shall be handled and settled in the following manner or it shall be deemed to have been abandoned."

CONCLUSIONS OF LAW

The Motions for Summary Judgment

The Union seeks summary judgment declaring that it is entitled to arbitration of the question of whether or not eighteen of its members were rightfully discharged. The collective bargaining agreement provides that: "Grievances arising out of the operation and interpretation of this agreement involving wages * * * hours or other conditions of employment" are the proper subject of arbitration. The parties have contracted to arbitrate such disputes and accordingly must do so. *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 63 U. S. 574, 80 S. Ct. 1347, 4 L. Ed. (2d) 1409 (1960). Defendant's contention that these employees are not entitled to arbitrate their discharges is based on the view that since they violated the no-strike agreement the *quid pro quo* of their right to arbitration has been annulled, that they have thus waived their right and that they have unclean hands. The culpability of these employees is not relevant to their right to arbitration —this is merely a question of what parties contracted for. The proper tribunal to decide this issue is in the arbitrator or this Court, on the issue of damages for violation of the no-strike agreement by the Union. Newberry Mills' motion for summary judgment should accordingly be refused and that of the Union granted.

The Counterclaim of Newberry Mills

The counterclaim of Newberry Mills raises questions of fact that should be resolved by this Court. Accordingly jurisdiction of the counterclaim is retained for disposition on the merits here, without in any way interfering with the arbitration proceedings concerning the discharged employees. That this is an appropriate procedure is indicated by *Sinclair Refining Company v. Atkinson*, 290 F. (2d) 312 (7 Cir. 1961) and *Drake Bakeries, Inc., v. Local 50, American B. & C. Wkrs.*, 287 F. (2d) 155 (2 Cir. 1961). Reversed, 294 F. (2d) 399 (1961).

For these reasons it is Ordered that defendant, Newberry Mills, submit to arbitration the disputed discharges

and that jurisdiction of defendant's counterclaim for damages is retained for disposition on its merits.

/S/ J. ROBT. MARTIN, JR.,
United States District Judge.

Greenville, S. C.,
March 2, 1962.

DECISION OF COURT OF APPEALS FOR THE FOURTH CIRCUIT

SOBELOFF, Chief Judge:

This action is based on a contract between an employer and a labor organization; it arises under section 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. A. § 185(a). The appeal is from an order of the District Court disposing of cross-motions for summary judgment. The court granted the motion of the plaintiff, Local 120, United Textile Workers, for specific performance of an arbitration provision in a collective bargaining agreement and denied the motion of the defendant, Newberry Mills, for dismissal of the action. Jurisdiction was retained for future consideration of the defendant's counterclaim for damages resulting from the plaintiff's alleged breach of a no-strike clause also embodied in the collective bargaining agreement. No appeal was taken from the ruling on the counterclaim.

On June 9, 1960, a number of Newberry Mills' employees went out on strike. Apparently as a result, eighteen employees were discharged. Although the Union admits that the strike did occur and that the discharged workers were involved in it, its contention is that this was a "wild cat" strike, undertaken wholly without union sanction and actively opposed by the Union, which exerted itself to bring about a resumption of work. The Union seeks to have the discharges arbitrated, insisting that, properly interpreted, the collective bargaining agreement so requires.[1]

[1] Under Section III of the collective bargaining agreement:

"Grievances arising out of the operation and interpretation of this agreement involving wages (other than general wage increase or decrease proposals as provided for in Section X) hours, or other conditions of employment shall be presented within five (5) working days of the time the aggrieved party has notice or knowledge of the event giving rise to the grievance, or being reasonably charged with

Newberry Mills resists arbitration because it believes that the June 9th strike constituted a violation of the collective bargaining agreement's no-strike clause.[2] It contends that since the agreement to arbitrate is the *quid pro quo* for the no-strike clause,[3] there has been a failure of consideration relieving it of the obligation to arbitrate the discharges. Also advanced are the related arguments that the dischargees, for whose benefit the Union has invoked the District Court's jurisdiction, have unclean hands; that "there is nothing to arbitrate"; that Newberry Mills has not contracted to arbitrate discharges due to a violation of the no-strike clause; and that the dischargees failed to observe an implied condition precedent to the invocation of the grievance procedure by not remaining on the job but going out on strike.[4]

It has been authoritatively decided that in suits under section 301 to compel arbitration the function of the courts is narrowly limited to determining "whether the reluctant party did agree to arbitrate the grievance . . . . An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in

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knowledge of the event, and shall be handled and settled in the following manner or it shall be deemed to have been abandoned."

Thereafter provision is made for a grievance procedure culminating in arbitration.

[2] "Section XVII—STRIKES AND LOCKOUTS

"(a) The term 'strike,' as herein used, shall include any concerted stoppage or slowdown of work or other impairments of the Company's production on the part of the employees within the bargaining unit.

"(b) During the term of this contract, the Union shall not authorize or support any strike.

"(c) Neither the Local Union nor the International Union shall be liable for damges for any strike under Section 301 of the Labor Management Relations Act of 1947 which neither the Local Union nor the International Union does not authorize or support during the life of this agreement." (sic)

[3] *Textile Workers v. Lincoln Mills*, 353 U. S. 448, 455 (1957); *United Steelworkers v. American Mfg. Co.*, 363 U. S. 564, 567 (1960); *Local 174, Teamsters v. Lucas Flour Co.*, 369 U. S. 95, 104-06 (1962).

[4] The defendant makes no claim that the proper steps, conforming to the explicit procedural requirements of the grievance and arbitration procedure, have not been taken by the Union to preserve the rights of the eighteen dischargees.

favor of coverage." *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 582-83 (1960).

The wording of the particular arbitration clause is an important factor in determining questions of coverage.[8] In resolving doubts "in favor of coverage," the courts have been instructed that the parties are bound to arbitrate all matters not explicitly excluded, that reasonably fit within the language used.[9] It cannot be said with "positive assurance" that this arbitration agreement does not comprehend the discharges that are being contested. That is, since discharges for engaging in strikes have not been explicitly excluded from the coverage of the arbitration agreement, we are not persuaded that the discharges in issue are not "[g]rievances arising out of the operation and interpretation of this [collective bargaining] agreement involving wages * * * hours, or other conditions of employment * * *." Surely, adopting a liberal interpretation of the language, as directed by the Supreme Court, the discharges are grievances as defined by the agreement.

Newberry Mills argues, however, that even assuming the discharges to be "grievances" under the collective bargaining agreement, it was relieved of the obligation to arbitrate because the strike allegedly violated the agreement. A similar argument was advanced and rejected in *Drake Bakeries, Inc., v. Local 50, American Bakery Workers*, 370 U. S. 254 (1962). There the employer contended that it was excused, by reason of the union's alleged breach of a no-strike clause, from its contractual obligation to arbitrate its claim for damages based upon the alleged breach of that clause.[10] The Court said:

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[8] Compare *Drake Bakeries, Inc. v. Local 50, American Bakery Workers*, 370 U. S. 254, 256-58 (1962), with *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238, 241-43 (1962).

[9] *United States Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 581, 584-85 (1960). See *Drake Bakeries, Inc. v. Local 50, American Bakery Workers*, 370 U. S. 254, 261-62 (1962); *International Association of Machinists v. International Aircraft Services, Inc.*, 302 F. (2d) 808 (4th Cir. 1962).

[10] A number of lower courts, considering the effect of an alleged violation of a no-strike clause on the employer's obligation to arbitrate employee grievances, have also rejected arguments similar to that made by Newberry Mills. See *International Molders Union, Local 239 v. Susquehanna Casting Co.*, 283 F. (2d) (3d Cir. 1960); *Retail, Wholesale Department Store Union, Local 108 v. Vaughn's Sanitary Bakery, Inc.*,

"* * * [T]his Court has prescribed no such inflexible rule rigidly linking no-strike and arbitration clauses of every collective bargaining contract in every situation. The company has not attempted, or claimed the right, either to terminate the entire contract or to extinguish permanently its obligations under the arbitration provisions. Instead, it has sued for damages for an alleged strike and, as far as this record reveals, the contract continued in effect, as did the promises of the parties to arbitrate and the promise of the union not to strike. Moreover, in this case, under this contract, by agreeing to arbitrate all claims without excluding the case where the union struck over an arbitrable matter, the parties have negatived any intention to condition the duty to arbitrate upon the absence of strikes. They have thus cut the ground from under the argument that an alleged strike, automatically and regardless of the circumstances, is such a breach or repudiation of the arbitration clause by the union that the company is excused from arbitrating, upon theories of waiver, estoppel, or otherwise. Arbitration provisions, which themselves have not been repudiated, are meant to survive breaches of contract, in many contexts, even total breach; and in determining whether one party has so repudiated his promise to arbitrate that the other party is excused the circumstances of the claimed repudiation are critically important. In this case the union denies having repudiated in any respect its promise to arbitrate * * *." 370 U. S. at 261-63.

In several significant features this case closely resembles *Drake Bakeries*. Preliminarily it is to be noted that Newberry Mills' *quid pro quo* argument is even more tenuously based than that in *Drake Bakeries*, for Newberry Mills has itself argued that it did not even know whether

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196 F. Supp. 633 (M. D. Pa. 1961); *Armstrong-Norwalk Rubber Corp. v. Local 283, United Rubber Workers*, 167 F. Supp. 817 (D. Conn. 1958), *appeal dismissed*, 269 F. (2d) 618 (2d Cir. 1959); but see, *Portland Web Pressmen's Union Local No. 17 v. Oregonian Publishing Co.*, 188 F. Supp. 859, 864-68 (D. Ore.) (distum), *affirmed on other grounds*, 286 F. (2d) 4 (9th Cir. 1960), *cert. denied*, 366 U. S. 912 (1961).

the strike was called over an arbitrable matter. And, if the strike was, in fact, over a non-arbitrable matter, it cannot in fairness be said that the arbitration agreement has been repudiated or otherwise breached by the Union. As to similarities between the two cases, Newberry Mills "has not attempted, or claimed the right, either to terminate the entire contract or to extinguish permanently its obligations under the arbitration provisions." 370 U. S. at 261. Moreover, since the parties have agreed to arbitrate all grievances, as defined in the contract, without excluding any that may arise as a result of alleged breaches of the no-strike agreement, "the parties have negatived any intention to condition the duty to arbitrate upon the absence of strikes." 370 U. S. at 262. There is, therefore, no basis whatsoever for concluding that the strike "automatically and regardless of the circumstances, is such a breach or repudiation of the arbitration clause by the union that the company is excused from arbitrating, upon theories of waiver, estoppel, or otherwise." 370 U. S. at 262. In addition, although the Union does not deny that there was a "strike," it denies that this strike, undertaken without authorization or support and actively opposed by it, breached any obligation owed by it under the no-strike clause. This is by no means a frivolous argument. The no-strike clause involved here is strictly limited. It imposes on the Union only the obligation not to "authorize or support any strike" and expressly excuses it from liability "for damages for any strike under Section 301 of the Labor Management Relations Act of 1947, which [it] does not authorize or support . . ." Under this contract, the Union breaches its obligation only if it has a hand in the strike.* The Union's position that the strike was a "wild cat" leaves no room, in the circumstances of this case, for an inference that, by the strike, the Union has "repudiated in any respect its promise to arbitrate . . ." 370 U. S., at 263.

* Compare *Portland Webb Pressmen's Union Local 17 v. Oregonian Publishers Co.*, 188 F. Supp. 859, 863, 866-67 (D. Ore.), *affirmed on other grounds*, 286 F. (2d) 4 (9th Cir. 1960), *cert. denied*, 366 U. S. 912 (1961).

It is clear, in light of the principles enunciated by the Supreme Court, that the defendant's argument against arbitration cannot prevail.*

Affirmed.

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* We agree with the District Court in its view that an examination of the culpability of the dischargees would clearly involve a consideration of the merits of the grievances. This power has been denied to the judiciary. *See United Steelworkers v. American Mfg. Co.*, 363 U. S. 564, 567-68 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U. S. 593, 596-99 (1960).

COMPLAINT

THE PLAINTIFF by Theodore W. Law, Jr., and Henry W. Kirkland, its Attorneys complaining of the Defendant alleges:

1. That this is a suit of a civil nature in equity wherein the District Court of the United States for the Western District of South Carolina has original jurisdiction pursuant to 28 U. S. C., Sec. 1337, in a case of actual controversy between the Plaintiff and Defendant herein as more fully hereinafter appears.

2. The suit arises under the Labor Management Relations Act of June 23, 1947, c. 120 Title 3, Section 301, 61 Stat. 146, Section 301, 29 U. S. C. A., Section 185, and also arises under the Federal Declaratory Judgment Act, 28 U. S. C. A. Sections 2201 and 2202.

3. That the Plaintiff, United Textile Workers of America, AFL-CIO, Local No. 120 (hereinafter referred to as UTWA is and at all times hereinafter mentioned was an unincorporated association, to wit: a labor organization and trade union, engaged in representing employees for the purpose of collective bargaining.

4. That upon information and belief, the Defendant, Newberry Mills, Inc., is a corporation duly chartered and organized and existing under and by virtue of the laws of one of the states of the United States, having a place of business in Newberry, South Carolina.

5. That the Defendant, Newberry Mills, Inc., is a manufacturer of textile products and engaged in interstate commerce.

6. That on or about the 8th day of August, 1959, UTWA and the Company entered into a collective bargaining agreement, the pertinent portions of which are hereinafter set forth; which agreement at all times hereinafter mentioned was in full force and effect and which may be terminated on August 8, 1961 or which may be extended, in effect, for two (2) year intervals thereafter in accordance with its terms.

7. That on or about June 9, 1960, certain persons employed by Newberry Mills, Inc., the Defendant in this action, went out on strike, which strike was not authorized by the Plaintiff herein.

8. That as soon as the Plaintiff was apprised of this situation every effort was made to terminate this unauthorized strike and said strike was terminated within a reasonable time and all employees returned to their proper jobs.

9. That, nevertheless; and not withstanding, the Defendant, Newberry Mills, Inc., discharged the following named employees: Bobbie D. Goings, Lowell Allen Dehardt, Reba Dennis, Curtis Wicker, Johnny Beck, Gerald C. Burton, Elise Williams, Everette Koon, James Smith, Mary Lou Griffin, Gertie Mae Person, Betty Jean Kinard, Angie B. Jones, Geneva B. Street, Mozelle R. Hiller, Jeffie F. Hiller, Carylon M. Epps and David E. Counts.

10. That these people were not leaders of the strike above described and in most cases were not participants, but were kept from their jobs because of the activities of other employees.

11. That hereinafter set forth are the pertinent provisions of an arbitration agreement which is a part of the agreement heretofore mentioned:

SECTION III—GRIEVANCE AND ARBITRATION PROCEDURE

"Grievances arising out of the operation and interpretation of this agreement involving wages (other than general wage increase or decrease proposals as provided for in Section X), hours, or other conditions of employment shall be presented within five (5) working days of the time the aggrieved party has notice or knowledge of the event giving rise to the grievance, or being reasonably charged with knowledge of the event, and shall be handled and settled in the following manner or it shall be deemed to have been abandoned.

Step 1. The employee or employees involved and the shop steward of that department shall jointly discuss the matter with the overseer or his designated assistant with equivalent authority, in an endeavor to settle the matter satisfactorily to the Union. Grievances taken up at this step shall be discussed and dis-

posed of within forty-eight (48) hours, and during the hours of the shift on which the grievance arises unless the investigation by the overseer will require additional time.

Step 2. If the grievance is not settled as provided in Step 1 above, the employee and/or the Union's shop steward in the department shall present it in writing on the grievance form provided by the Union, to the overseer of the department within five (5) working days. The Company agrees that when such notice is received, the overseer of the department will meet with the aggrieved employee or employees and the shop steward promptly at a mutually satisfactory time and place during the hours of the shift of the employee or employees and the shop steward involved, in an attempt to adjust the grievance. The Company agrees that the overseer will make written disposition of the grievance at this step, on the original grievance form submitted and return to the employee and/or the Union's shop steward within three (3) working days.

Step 3. Should the grievance fail of adjustment in Step 2, the general shop committee, which committee shall not consist of more than six (6) employees, shall, if it decides the grievance has merit, attempt to adjust the matter with the Company's designated representative at a mutually satisfactory time within seven (7) working days of the overseer's decision in Step 2 above. Such notice to pursue the matter must be presented to the Company at least forty-eight (48) hours in advance of any meeting proposed by the Union and/or the Company. The Company's designated representative shall furnish a written answer to the Union within three (3) working days of such conference.

Grievance meetings under Step 3 of this article will be held, in so far as feasible, after working hours, and at such times as will not interfere with production. Meetings will be held at such other times as may be necessary under all of the circumstances for the adjusting of grievances. Where a meeting is called at the request of the Company, the employees attending

such meeting during their regularly scheduled working hours will be compensated for such time by the Company. Where the meeting is held at the request of the general shop committee, those employees during whose actual work shift the meeting is scheduled and held will receive pay for the time spent at such meeting, but not exceeding one (1) hour per employee for such meetings. Such compensation shall not be payable to any employee more frequently than twice in any calendar month. Any employees attending the meeting at times when not regularly scheduled to work shall not be entitled to compensation for such time from the Company.

Step 4. If the Company's decision as stated in Step 3 above is not satisfactory to the Union, either party may request an extension of time in which a meeting can be held with the plant manager in a further attempt to settle the matter. Unless an extension of time has been agreed upon between the parties, either party may make a written demand for arbitration within ten (10) days of the receipt of the Company's decision, setting forth in said demand the issue to be arbitrated (such issue to be in accordance with the written grievance filed in Step No. 2 of the Grievance Procedure). If such demand is not given within the time limit specified above, there shall be no arbitration, and such matter shall be considered abandoned, and no further action thereon can be taken. A representative of United Textile Workers of America, A. F. of L.-C. I. O., may be present in Step 4, if the Union so desires, to assist in the settlement of grievances.

(a) **Selection of Arbiter**. Within two (2) work days after written demand for arbitration is served by either party upon the other, the two parties shall confer and endeavor to select an arbiter. Should they be unable to mutually agree within forty-eight (48) hours, the parties shall jointly request the director of the Federal Mediation Service of the U. S. Department of Labor, Washington, D. C., to supply a list of arbi-

ters, competent in this field, consisting of seven (7) names, to each of the parties. After said list has been received, the parties shall within seven (7) days meet and select an arbiter in the following manner. The parties shall alternately eliminate three (3) names each from the list, and the name remaining shall serve as arbiter. The parties shall alternate the right of either party to eliminate first. The arbiter so selected shall promptly meet, go thoroughly into the grievance or dispute, hear such testimony as may be material, and will arrive at a decision as promptly as possible. Both the Company and the Union shall be afforded a full opportunity to present such evidence as either may deem necessary, or as the arbiter may request or demand. The arbiter shall have no power to alter or amend or to add to the provisions of this contract in any respect, and shall have to apply the provisions of this agreement and any amendments thereto. The findings and decision of the arbiter shall be binding on both parties hereto and/or employees and shall be conclusive of the controversy submitted.

(b) **Arbitration Expense.** The Company and Local Union No. 120, United Textile Workers of America, A. F. of L. C. I. O., shall each pay its own expenses incurred in connection with the arbitration and one-half (1/2) of the expenses and fees of the arbiter. Any case arbitrated shall not be brought up for reconsideration for at least six (6) months after the decision of final arbitration.

(c) Except when a formal grievance has already been filed by an aggrieved employee or employees, nothing contained herein shall be construed or interpreted as denying or impairing the right of any employee(s) to discuss matters direct with the second hand, overseer and any other of the Company's representatives who are responsible, either with or without a designated representative of the Union at the option of the employee, provided, however, that any and all grievances shall be settled as outlined above.

12. That the Plaintiff herein has complied with all provisions of the foregoing agreement and has requested arbitration and Defendant has refused and failed and does refuse and fail to comply with the provisions of the collective bargaining agreement pertaining to arbitration.

WHEREFORE, Plaintiff prays that the Order of this Court issue requiring the Defendant, Newberry Mills, Inc., to submit the grievances of the employees hereinbefore named to an Arbitrator chosen as required by the Arbitration Agreement herein set forth and for such other and further relief as to this Court may seem proper.

THEODORE W. LAW, JR.,
HENRY W. KIRKLAND,
Attorneys for Plaintiff,
1318 Sumter Street,
Columbia, S. C.

September 27, 1960.

ANSWER AND COUNTERCLAIM

Defendant, answering the complaint, alleges:

FOR A FIRST DEFENSE

1. Paragraphs One through Five are admitted.

2. Paragraph Six is admitted with the exception that defendant denies the portions of the Collective Bargaining Agreement referred to are "pertinent".

3. Answering Paragraph Seven, defendant admits that on June 9, 1960, certain employees of defendant went on strike, and that such strike was not authorized by the Collective Bargaining Agreement between plaintiff and defendant, but defendant denies that such strike was not authorized by plaintiff.

4. Paragraph Eight is denied.

5. Paragraph Nine is admitted.

6. Paragraph Ten is denied.

7. Answering Paragraph Eleven, defendant admits the portions of the Collective Bargaining Agreement quoted are correctly quoted, but denies that said quoted provisions are applicable under the factual situation set forth in the complaint.

8. Answering Paragraph Twelve, defendant denies plaintiff has complied with all the provisions of the Collective Bargaining Agreement, but admits it has upon request refused and failed and does refuse and fail to arbitrate, for reasons hereinafter set forth.

FOR A SECOND DEFENSE

Plaintiff is not entitled to the relief prayed for because the Collective Bargaining Agreement between plaintiff and defendant referred to in Paragraph Six of the complaint contains a "no strike clause", such clause being the *quid pro quo* for the arbitration provisions which plaintiff seeks to invoke, which "no strike clause" was violated by plaintiff.

FOR A THIRD DEFENSE

Plaintiff is not entitled to the relief prayed for because plaintiff seeks to now avail itself of the same arbitration provisions of the Collective Bargaining Agreement between plaintiff and defendant which plaintiff abandoned and waived by going on strike in violation of the "no strike clause" instead of arbitrating the grievances which gave rise to such strike.

FOR A FOURTH DEFENSE

Plaintiff is not entitled to the relief prayed for because plaintiff, instead of availing itself of the grievance and arbitration procedure set forth in said Collective Bargaining Agreement chose to violate Section XVI of said Collective Bargaining Agreement, which Section provides as follows:

> (a) The term "strike", as herein used, shall include any concerted stoppage or slow-down of work or other impairments of the Company's production on the part of the employees within the bargaining unit.
>
> (b) During the term of this contract, the Union shall not authorize or support any strike.
>
> (c) Neither the local Union nor the International Union shall be liable for damages for any strike under Section 301 of the Labor Management Relations Act of 1947, which neither the local Union nor the Inter-

national Union does not authorize or support during the life of this agreement.

(d) In the event of a strike, the Union, upon receipt of notice from the Company, shall endeavor to bring such strike to an end; and one of the steps which the Union shall take in order to bring the strike to an end shall be to cause its chief officers in this State to sign a notice which the Company shall cause to be posted, reading as follows:

TO EMPLOYEES OF NEWBERRY MILLS, INC.

The present strike (or other impairment of production, as the case may be), is not authorized or supported by this Union.

All employees within the bargaining unit are hereby directed to return to their jobs and to cease any action which may impair the Company's production.

(e) During the term of this contract, the Company shall not lock out any of its employees."

And therefore, plaintiff comes into Court with unclean hands, seeking to avail itself of the very same contract it breached.

FOR A FIFTH DEFENSE

Plaintiff is not entitled to the relief prayed for because plaintiff invokes its existence as an entity apart from its employees to aid certain named employees who, were they plaintiffs, would have no standing in any Court because they, instead of availing themselves of the grievance and arbitration procedure set forth in said Collective Bargaining Agreement chose to violate Section XVII of said agreement, the "no strike clause", quoted above, and therefore have "unclean hands".

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM

Defendant alleges:

1. This controversy arises under the Labor Management Relations Act, 1947, as amended, 29 USCA, Section 185, as hereinafter more fully appears.

2. Defendant is a corporation duly organized and existing under the laws of South Carolina, and is engaged in the business of manufacturing textile materials.

3. Plaintiff is an unincorporated association commonly referred to as a labor organization, having officers, agents and members, and doing business in Newberry County, State of South Carolina.

4. On August 8, 1959, plaintiff and defendant entered into a contract which was in effect on June 9, 1960. Section XVII of this contract reads as follows:

(a) The term "strike", as herein used, shall include any concerted stoppage or slow-down of work or other impairments of the Company's production on the part of the employees within the bargaining unit.

(b) During the term of this contract, the Union shall not authorize or support any strike.

(c) Neither the local Union nor the International Union shall be liable for damages for any strike under Section 301 of the Labor Management Relations Act of 1947, which neither the local Union nor the International Union does not authorize or support during the life of this agreement.

(d) In the event of a strike, the Union, upon receipt of notice from the Company, shall endeavor to bring such strike to an end; and one of the steps which the Union shall take in order to bring the strike to an end shall be to cause its chief officers in this State to sign a notice which the Company shall cause to be posted, reading as follows:

TO EMPLOYEES OF NEWBERRY MILLS, INC.

The present strike (or other impairment of production, as the case may be), is not authorized or supported by this Union.

All employees within the bargaining unit are hereby directed to return to their jobs and to cause any action which may impair the Company's production.

(e) During the term of this contract, the Company shall not lock out any of its employees.

5. On June 9, 1960, the plaintiff through its officers, agents and members, acting in concert, engaged in a strike,

and the plaintiff induced and encouraged its officers, agents and members to engage in this strike, or concerted refusal to attend to their employment relationship with defendant.

6. In furtherance to the objectives of said strike, the plaintiff through its officers, agents and members authorized, condoned and ratified a picket line, which picket line through the use of violence, intimidation and coercion impeded and prevented employees wishing to work from entering the plant.

7. The acts committed and engaged in by the plaintiff through its officers, agents and members are in violation of the provisions of Section XVII of the Collective Bargaining Agreement set out above.

8. The "no strike clause" was designed to eliminate work stoppages and to stabilize the Collective Bargaining relationship between the parties.

9. By reason of the acts and things aforesaid, defendant has suffered injury to its business operations through its inability to produce the goods necessary to fulfil contractual commitments with customers, which goods were to flow to customers through the channels of the interstate commerce, and has sustained great damage and loss, all to its damage in the sum of Fifty-five Thousand Six Hundred ($55,600.00) Dollars.

WHEREFORE, defendant, having fully answered the complaint, prays that the complaint be dismissed and further demands judgment in the sum of Fifty-five Thousand Six Hundred ($55,600.00) Dollars on its counterclaim.

ELLISON D. SMITH, JR.,
THOMAS KEMMERLIN, JR.,
Attorneys for Defendant.

November 18, 1960.

REPLY

The Plaintiff above named by way of Reply to the Defendant's Counterclaim would respectfully show to the Court:

FOR A FIRST DEFENSE

1. That paragraphs No. 1, No. 2, No. 3 and No. 4 of Defendant's Counterclaim as set forth and entitled "For a Sixth Defense and by way of Counterclaim" are admitted.

2. That paragraphs No. 5, No. 6 and No. 7 are denied.

3. That paragraph No. 8 is admitted.

4. That as to paragraph No. 9, Plaintiff has no information on which to base a belief or reply and therefore denies the same and demands strict proof thereof.

FOR A SECOND DEFENSE

5. That while Plaintiff admits that on or about June, 1960, certain employees of Newberry Mills, stopped work in what was known and referred to as a wildcat strike that Plaintiff immediately upon being informed thereof performed its duties as required under Paragraph D of Section 17 of the Contract and in fact within a few days time did bring the so called wildcat strike to a conclusion and that, therefore, Plaintiff, having fully complied with its contractual obligations, it is protected from any liability and damages under and by virtue of the terms of Paragraph C of Section 17 of the collective bargaining agreement between the parties.

WHEREFORE, having fully replied, Plaintiff prays that the Counterclaim of the Defendant be dismissed.

LAW, KIRKLAND & AARON,
By: Theodore W. Law, Jr.,
Attorneys for Plaintiff.

Columbia, South Carolina,
March 9, 1962.

MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant moves for an Order granting Summary Judgment in favor of the Defendant, in so far as the Complaint is concerned, on the grounds:

1. That Plaintiff is not entitled to the relief prayed for in the Complaint because the Collective Bargaining Agreement between Plaintiff and Defendant contains a "no strike clause", such clause being the *quid pro quo* for the arbitration provisions which Plaintiff seeks to invoke, which "no strike clause" was violated by all persons named in the Plaintiff's Complaint.

2. That Plaintiff is not entitled to the relief prayed for in the Complaint because Plaintiff seeks to now invoke the benefits of the same arbitration provisions of the Collective Bargaining Agreement which the persons named in the Complaint abandoned and waived by going on strike in violation of the "no strike clause" instead of arbitrating the grievances which gave rise to such strike.

3. That Plaintiff is not entitled to the relief prayed for in the Complaint because Plaintiff seeks to now invoke the benefits of the same arbitration provisions of the Collective Bargaining Agreement which the persons named in the Complaint breached when they went on a strike in violation of the "no strike clause", said persons now seeking to invoke the equitable jurisdiction of this Court when they have "unclean hands" as a result of their strike above mentioned and subsequent actions on their part.

The Motion is based upon the pleadings, the Defendant's interrogatories to Plaintiff and Plaintiff's answers thereto, and the Defendant's request for admissions and the Plaintiff's response to same, all of which are on file in this Court.

ELLISON D. SMITH, JR.,
THOMAS KEMMERLIN, JR.,
Attorneys for Defendant.

February .., 1961.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW the United Textile Workers of America, AFL-CIO, Local Union No. 120, the Plaintiff in the above styled and numbered case, believing that there are no material issues of fact in the instant case to be decided by the Court and that the terms of the Contract existing between the parties and quoted below are final and binding, moves the Court under Rule 56 (b) to grant Summary Judgment in its favor upon the following grounds:

I

That this is an action in the nature of specific performance brought under the provisions of the Labor Management Relations Act of June 23, 1947, c. 120 Title 3, Section 301, 61 Stat. 146, Section 301, 29 U. S. C. A., Section 185 and also under the Federal Declaratory Judgment Act, 28 U. S. C. A. Sections 2201 and 2202, that the Contract as below set out binds the Defendant to submit all matters in dispute to arbitration.

II

That the terms of the Contract pertinent to the subject dispute are set out in Section 3, headed "Grievance and Arbitration Procedure" and are as follows:

SECTION III—GRIEVANCE AND ARBITRATION

"Grievances arising out of the operation and interpretation of this agreement involving wages (other than general wage increase or decrease proposals as provided for in Section X) hours, or other conditions of employment shall be presented within five (5) work days days of the time the aggrieved party has notice or knowledge of the event giving rise to the grievance, or being reasonably charged with knowledge of the event, and shall be handled and settled in the following manner or it shall be deemed to have been abandoned.

Step 1. The employee or employees involved and the shop stewart of that department shall jointly discuss the matter with the overseer or his designated

assistant with equivalent authority, in an endeavor to settle the matter satisfactorily to the Union. Grievances taken up at this step shall be discussed and disposed of within forty-eight (48) hours, and during the hours of the shift on which the grievance arises unless the investigation by the overseer will require additional time.

Step 2. If the grievance is not settled as provided in Step 1 above, the employee and or the Union's shop steward in the department shall present it in writing on the grievance form provided by the Union, to the overseer of the department within five (5) working days. The Company agrees that when such notice is received, the overseer of the department will meet with the aggrieved employee or employees and the shop steward promptly at a mutually satisfactory time and place during the hours of the shift of the employee or employees and the shop steward involved, in an attempt to adjust the grievance. The Company agrees that the overseer will make written disposition of the grievance at this step, on the original grievance form submitted and return to the employee and or the Union's shop steward within three (3) working days.

Step 3. Should the grievance fail of adjustment in Step 2, the general shop committee, which committee shall not consist of more than six (6) employees, shall, if it decides the grievance has merit, attempt to adjust the matter with the Company's designated representative at a mutually satisfactory time within seven (7) working days of the overseer's decision in Step 2 above. Such notice to pursue the matter must be presented to the Company at least forty-eight (48) hours in advance of any meeting proposed by the Union and/or the Company. The Company's designated representative shall furnish a written answer to the Union within three (3) working days of such conference.

Grievance meeting under Step 3 of this article will be held, in so far as feasible, after working hours,

and at such times as will not interfere with production. Meetings will be held at such other times as may be necessary under all of the circumstances for the adjusting of grievances. Where a meeting is called at the request of the Company, the employees attending such meeting during their regularly scheduled working hours will be compensated for such time by the Company. Where the meeting is held at the request of the general shop committee, those employees during whose actual work shift the meeting is scheduled and held will receive pay for the time spent at such meeting, but not exceeding one (1) hour per employee for such meetings. Such compensation shall not be payable to any employee more frequently than twice in any calendar month. Any employees attending the meeting at times when not regularly scheduled to work shall not be entitled to compensation for such time from the Company.

Step 4. If the Company's decision as stated in Step 3 above is not satisfactory to the Union, either party may request an extension of time in which a meeting can be held with the plant manager in a further attempt to settle the matter. Unless an extension of time has been agreed upon between the parties, either party may make a written demand for arbitration within ten (10) days of the receipt of the Company's decision, setting forth in said demand the issue to be arbitrated (such issue to be in accordance with the written grievance filed in Step No. 2 of the Grievance Procedure). If such demand is not given within the time limit specified above, there shall be no arbitration, and such matter shall be considered abandoned, and no further action thereon can be taken. A representative of United Textile Workers of America, A. F. of L.-C. I. O., may be present in Step 4, if the Union so desires, to assist in the settlement of grievances.

(a) **Selection of Arbiter**. Within two (2) work after written demand for arbitration is served by either party upon the other, the two parties shall con-

fer and endeavor to select an arbiter. Should they be unable to mutually agree within forty-eight (48) hours, the parties shall jointly request the Director of the Federal Mediation Service of the U. S. Department of Labor, Washington, D. C., to supply a list of arbiters, competent in this field, consisting of seven (7) names, to each of the parties. After said list has been received, the parties shall within seven (7) days meet and select an arbiter in the following manner. The parties shall alternately eliminate three (3) names each from the list, and the name remaining shall serve as arbiter. The parties shall alternate the right of either party to eliminate first. The arbiter so selected shall promptly meet, go thoroughly into the grievance or dispute, hear such testimony as may be material, and will arrive at a decision as promptly as possible. Both the Company and the Union shall be afforded a full opportunity to present such evidence as either may deem necessary, or as the arbiter may request or demand. The arbiter shall have no power to alter or amend or to add to the provisions of this contract in any respect, and shall have to apply the provisions of this agreement and any amendments thereto. The findings and decision of the arbiter shall be binding on both parties hereto and or employees and shall be conclusive of the controversy submitted.

(b) **Arbitration Expenses.** The Company and Local Union No. 120, United Textile Workers of America, A. F. of L.-C. I. O. shall each pay its own expenses incurred in connection with the arbitration and one-half (1/2) of the expenses and fees of the arbiter. Any case arbitrated shall not be brought up for reconsideration for at least six (6) months after the decision of final arbitration.

(c) Except when a formal grievance has already been filed by an aggrieved employee or employees, nothing contained herein shall be construed or interpreted as denying or impairing the right of any employee(s) to discuss matters direct with the second hand, overseer and any other of the Company's repre-

sentatives who are responsible, either with or without a designated representative of the Union at the option of the employee, provided, however, that any and all grievances shall be settled as outlined above."

III

That the parties hereto voluntarily entered into this contract and are irrevocably and finally bound by its terms.

IV

In view of the Supreme Court's decision in the case of *Lincoln Mills v. T. W. U. A.*, 353 U. S. 448, each party is denied the arbitrary right of refusing arbitration when arbitration is called for by the terms of a collective bargaining agreement.

V

That the questions sought to be injected into this action by the Defendant are the very questions to be decided by arbitration.

VI

It is therefore apparent that the only question before this Court is shall the terms of the Contract be enforced and the Defendant required to abide by the same.

WHEREFORE, Plaintiff prays that this, its Motion for Summary Judgment, be inquired into and after due consideration judgment be granted in favor of Plaintiff with costs against Defendants.

Respectfully submitted,

UNITED TEXTILE WORKERS OF AMERICA, AFL-CIO, LOCAL UNION NO. 120.

BY: Theodore W. Law, Jr.
Of Counsel.

THEODORE W. LAW, JR.
HENRY W. KIRKLAND,
1508 Washington Street,
Columbia, South Carolina.
Attorneys for Plaintiff.

INTERROGATORIES PROPOUNDED BY DEFENDANT

To Messrs. La[illegible], Kirkland, and Aaron, Attorneys for Plaintiff:

The Defendant demands that the Plaintiff answer the following interrogatories, under oath, pursuant to Rule 33 of the Federal Rules of Civil Procedure:

1. Paragraph Ten (10) of the Complaint in this action states that certain persons named in Paragraph Nine (9) of the Complaint were not "leaders of the strike" described in the Complaint. Who, then, were the "leaders" in said strike?

2. Paragraph Ten (10) of the Complaint in this action states that certain persons named in Paragraph Nine (9) of the Complaint "in most cases were not participants" in the strike described in the Complaint.

(a) Name which persons named in Paragraph Nine (9) were not "participants" in said strike, and

(b) define the use of the word "participants" as used in the Complaint.

3. List the persons named in Paragraph Nine (9) of the Complaint who did not serve on the picket line.

4. List the persons named in Paragraph Nine (9) of the Complaint who prior to the strike did not enlist the aid of other employees to join the strike.

5. Did any of the persons named in Paragraph Nine (9) of the Complaint serve refreshments to persons on the picket line? If so, name such persons.

6. Do Mary Lou Griffin and Gertie Mae Person assert that they were working at the time of the strike?

7. If the answer to interrogatory number six (6) is yes, do they assert they reported to work after the strike?

8. Do Mary Lou Griffin and Gertie Mae Person assert they were discharged as a result of strike?

9. The following ad appeared in the Newberry paper:

ALL EMPLOYEES
OF
NEWBERRY MILLS, INC.
WILL HOLD A SPECIAL MEETING
ON
SUNDAY, JULY 10th, 1960
AT 3:00 O'CLOCK
AT THE UNION HALL
AT 924 DRAYTON ST.

At this meeting a vote will be taken on whether to return to work under the company's terms and conditions OR whether the employees shall remain IDLE until a settlement is reached.

EMPLOYEES

(a) Who placed this ad in the paper?; (b) Who paid for it?; (c) If it was not paid for with Union funds, was reimbursement made to the person or persons publishing it out of Union funds?

10. Certain radio announcements (advertisements) were made concerning the meeting held at the Union Hall on Sunday, July 10, 1960 at 3:00 P. M. prior to said meeting. (a) Who placed these announcements with the station; (b) who paid for these announcements; and (c) if these announcements weer not paid for with Union funds, was reimbursement made to the person or persons having such announcements made out of Union funds?

11. (a) Did any officers or members of the Union committee know of the advertisements mentioned in interrogatives Nine (9) and Ten (10) prior to their appearance? (b) If the answer is yes, what action, if any, was taken by the Plaintiff to stop the appearance of said advertisement or to counteract their influence?

12. What actions, if any, were taken by the Plaintiff to bring the strike to an end?

13. When was the first meeting of the Union Committee held following said strike?

14. What action was taken by the officers, Union Committee, or members of the Union Committee at the meeting held Sunday, July 10, 1960 at 3:00 P. M. at the Union Hall?

15. Who drew up the so-called "six point union proposal" offered the company during the strike?

16. What efforts, if any, were made by the persons named in Paragraph Nine (9) of the Complaint to seek either police or company protection to enter the plant?

17. What efforts, if any, were made by the Plaintiff to seek either police or company protection for employees who had not joined the strike?

S/ ELLISON D. SMITH, JR.
S/ THOMAS KEMMERLIN, JR.
Attorneys for Defendant.

January ..., 1961.

PLAINTIFF'S ANSWER TO INTERROGATORIES PROPOUNDED BY THE DEFENDANT

To Ellison D. Smith, Jr., Esq. and Thomas Kemmerlin, Jr., Esq., Attorneys for Defendant:

The following are the answers of the Plaintiff to the written Interrogatories propounded by the Defendant:

Answer to No. 1: Actually as far as I know there were no leaders in it. It was a spontaneous strike. It just happened.

Answer to No. 2: (a) They were out on strike but the ones I named did not serve on the picket line. (Everette Koon, James Smith and Gerald C. Burton.)

Answer to No. 2: (b) The participants were individual employees of the mill who were on strike and were off from work because of the strike.

Answer to No. 3: Gerald Burke, Everette Koon and James Smith; these are all I am positive about.

Answer to No. 4: This is a question that I cannot answer as I do not know. I am positive that Everette Koon, James Smith and Gerald C. Burton did not serve on the picket line. In fact, they assisted me in getting the strikers to return to work, but as to the others, I do not know.

Answer to No. 5: I do not know.

Answer to No. 6: Gloria Mae Person was employed as a probationary employee at the time of the strike. She did not cross the picket line nor enter the mill. Mary Lou Grif-

fin was on leave and came to the plant upon the expiration of her leave but did not cross the picket line.

Answer to No. 7: Answered in question No. 6.

Answer to No. 8: Yes.

Answer to No. 9: (a) I have no knowledge of any ad appearing on July 10, 1960 and I do not know who paid for any ad at any time but I do know that no ad was paid for out of union funds.

(b) I do not know.

(c) No.

Answer to No. 10: I did not know who placed any announcements with radio stations nor who paid for them but they were not paid for with union funds.

Answer to No. 11: No.

Answer to No. 12: The first action was taken at the request of Mr. L. E. Gatlin, Plant Manager. Mr. Whitmire, Southern Director of United Textile Workers sent to Mr. Gatlin a telegram in accordance with the contract containing the language as prescribed in the contract. Copies of this telegram were made by Newberry Mills and posted in and around the plant, both inside and outside. The statement advised that this was an unauthorized strike. On Saturday, June 11, 1960, I contacted Mr. L. E. Gatlin, Plant Manager, requesting a meeting with the company, the local union committee and myself. Mr. Gatlin advised that he would be unable to meet on that date, but would meet Sunday morning, June 12, 1960. The committee and myself met with the company at 10:00 A. M. on Sunday morning. This meeting continued from that time until 6:00 P. M., with a short luncheon recess. We discussed means of getting the return to work of employees. We asked the company, as a measure of good will, to speed up grievance procedures and all grievances raised by striking employees were dropped as a means of settling the strike but would be handled in accordance with the terms of the contract. Subsequently when the people were ready to return to work, the company would not specify when they could come back to work.

Answer to No. 13 and No. 14: Answered in question No. 12.

Answer to No. 15: This was a program and not a demand. I drew it up. We plainly stated to the company that these were suggestions and not demands.

Answer to No. 16: I do not have any knowledge of this except that the mayor asked James Smith and myself to go to the gate, that it was being blocked. We went to the gate. There was no blocking, in fact, there was a corridor of about eight feet wide. The Police were at the scene.

Answer to No. 17: None, because it was not necessary.

/S/ THEODORE W. LAW, JR.,
/S/ HENRY W. KIRKLAND,
Attorneys for Plaintiff.
1508 Washington Street,
Columbia, South Carolina.

January 16, 1961.

STATE OF SOUTH CAROLINA.
COUNTY OF RICHLAND.

PERSONALLY appeared before me, Radford Cope, who being duly sworn, deposes and says: that he is the International Representative of United Textile Workers of America, AFL-CIO; that he has read the foregoing answers to Interrogatories which are true and correct according to his knowledge, information and belief.

/S/ RADFORD COPE.

SWORN to before me this 16th
day of January, 1961.

/S/ BARBARA ANN SCOTT (SEAL)
Notary Public for South Carolina.

REQUEST FOR ADMISSIONS BY DEFENDANT DIRECTED TO PLAINTIFF

To Messrs. Law, Kirkland, and Aaron, Attorneys for Plaintiff:

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, Defendant requests that the Plaintiff admit the truth of the following facts:

1. That the attached booklet contains a true and correct copy of the contract existing between Plaintiff and Defendant at the time of the strike set forth in the Complaint.

2. That Mary Lou Griffin and Gertie Mae Person were out on leave of absence at the time of said strike.

3. That Mary Lou Griffin left work at Newberry Mills, Inc., on June 7, 1960, before the strike on a leave of absence.

4. That Mary Lou Griffin requested no extension of said leave of absence.

5. That Gertie Mae Person was on probation as a new employee and was laid off on June 9, 1960, at the end of the second shift, prior to the strike which began on the third shift.

6. That pickets at times physically blocked the way of employees who wished to work during said strike.

7. That pickets at times applied physical force to employees (assaulted them) who wished to work during said strike.

8. That pickets at times threatened to use violence against employees who wished to work during said strike.

9. That pickets at times used coercion and intimidation to prevent employees who wished to work during said strike.

10. That Bobbie D. Goings served on the picket line.

11. That Lowell Allen Dehardt served on the picket line.

12. That Reba Dennis served on the picket line.

13. That Curtis Wicker served on the picket line.

14. That Johnny Beck served on the picket line.

15. That Gerald C. Burton served on the picket line.

16. That Elise Williams served on the picket line.

17. That Everette Koon served on the picket line.

18. That James Smith served on the picket line.
19. That Betty Jean Kinard served on the picket line.
20. That Angie B. Jones served on the picket line.
21. That Geneva B. Street served on the picket line.
22. That Mozelle R. Hiller served on the picket line.
23. That Jeffie F. Hiller served on the picket line.
24. That Carylon M. Epps served on the picket line.
25. That David E. Counts served on the picket line.

/S/ ELLISON D. SMITH, JR.,
/S/ THOMAS KEMMERLIN, JR.,
Attorneys for Defendant.

January ..., 1961.

PLAINTIFF'S ANSWERS TO REQUEST FOR ADMISSIONS BY DEFENDANT

To Ellison D. Smith, Jr., Esq., and Thomas Kemmerlin, Jr., Esq., Attorneys for Defendant:

The following are the Answers of the Plaintiff to the written request for admissions by Defendant directed to the Plaintiff:

Answer to No. 1: Yes.
Answer to No. 2: Correct.
Answer to No. 3: She was on leave. I am not positive about the dates.
Answer to No. 4: That is true.
Answer to No. 5: No.
Answer to No. 6: No.
Answer to No. 7: Not to my knowledge.
Answer to No. 8: Not to my knowledge.
Answer to No. 9: Not to my knowledge.
Answer to No. 10: She did.
Answer to No. 11: He did.
Answer to No. 12: I do not know.
Answer to No. 13: Yes.
Answer to No. 14: Yes.
Answer to No. 15: Not to my knowledge.
Answer to No. 16: Yes.
Answer to No. 17: No.
Answer to No. 18: No.

Answer to No. 19: Yes.
Answer to No. 20: Yes.
Answer to No. 21: Yes.
Answer to No. 22: Yes.
Answer to No. 23: Yes.
Answer to No. 24: Not to my knowledge.
Answer to No. 25: Yes.

HENRY W. KIRKLAND,
THEODORE W. LAW, JR.,
Attorneys for Plaintiff.
1508 Washington Street,
Columbia, South Carolina.

January 26, 1961.

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND.

PERSONALLY appeared before me, Radford Cope, who being duly sworn, deposes and says: that he is the International Representative of United Textile Workers of America, AFL-CIO; that he has read the foregoing Answers to Request for Admissions which are true and correct according to his knowledge, information and belief.

RADFORD COPE

SWORN to before me this 16th
day of January, 1961.

BARBARA ANN SCOTT (SEAL)
Notary Public for South Carolina.

A true copy: Teste:

S/ RICHARD M. E. WILLIAMS, JR.,
Clerk, U. S. Court of Appeals for Fourth Circuit.

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FILED
JUL 8 1963
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1963

No. 182

NEWBERRY MILLS, INC., PETITIONER,

versus

UNITED TEXTILE WORKERS OF AMERICA, AFL-CIO, LOCAL UNION NO. 120, RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LAW, KIRKLAND & AARON
By: THEODORE W. LAW, JR.

The State Printing Co.

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QUESTIONS INVOLVED

Is the Respondent entitled to the relief granted by the U. S. District Court for the Western District of South Carolina and affirmed by the United States Court of Appeals for the Fourth Circuit. The granting of said relief being based on the admitted fact that "as soon as the Respondent was apprised of this situation every effort was made to terminate this unauthorized strike and said strike was terminated within a reasonable time and all employees returned to their proper jobs" and that the pertinent provisions of the Contract described were as follows:

The Company's answer admitted the material allegations of the complaint, but asserted that the conduct of the eighteen (18) employees violated the "no-strike clause" and banned the union from seeking to compel arbitration for their benefit.

The Company and the Union moved for summary judgment on the Union's Complaint. These motions came before the Honorable J. Robert Martin, Jr., at Greenwood on December 7, 1961. Arguments on both motions were by agreement submitted on briefs without oral argument.

On March 2, 1962, the Honorable J. Robert Martin, Jr. filed his Findings of Fact, Conclusions of Law and Order which granted the Union's motion for Summary Judgment on the Complaint and denied the Company's motion for Summary Judgment on the Complaint. This Order was affirmed by the United States Court of Appeal for the Fourth Circuit by its Opinion dated March 6, 1963.

COUNTER STATEMENT OF THE FACTS

That on or about June 9, 1960 certain persons employed by Newberry Mills, Inc., the Appellant, refused to report for work. That this action began with the third shift of the mill, spread to other shifts and eventually involved most of the several hundred employees of the mill. This work stoppage was given the term, "wildcat strike" because it was not authorized by the union, the Appellee herein, came about spontaneously and spread because of general dissatisfaction of the employees with their working conditions.

The facts which gave rise to this case cannot be more adequately stated than is done by Mr. Radford Cope, Administrative Representative for the United Textile Workers of America in an Affidavit given in support of Appellee's Motion for Summary Judgment, which was granted by the district court. The affidavit is here quoted:

> "PERSONALLY appeared before the undersigned Notary Public for South Carolina, duly authorized by

law to administer oaths, RADFORD COPE, who being duly sworn, deposes and says:

My name is Radford Cope. I reside at Newberry, South Carolina. I am Administrative Representative for the United Textile Workers of America. As such representative, I participated in and represented the union in connection with the handling of the various grievances outlined in the Complaint in this action.

Although, as outlined in the Complaint in this action, the contract between the union and Newberry Mills provides that in the event grievances cannot be settled through administrative procedures, the grievances shall be referred to an arbitrator, the Newberry Mills management has refused to go through the various steps in the grievance procedure and has refused to arbitrate any of the grievances outlined in the Complaint.

This action by the management of Newberry Mills has been entirely arbitrary and in total disregard of the provisions of the contract; the alleged excuse being that these individuals took part in a wildcat strike which took place prior to the time these grievances arose. Although it is admitted that such a strike did occur, the union, as such, had nothing whatsoever to do with this labor disturbance.

Upon being notified that certain operatives had left the job and formed picket lines, the union immediately, as required by its contract, notified these individuals that such conduct had not been authorized by the union and called upon them to return to their jobs immediately.

In due time, the labor disturbance caused by these operatives was terminated and the mill resumed full time operations.

The grievances complained about by the individuals listed in the Complaint in this action arose after all hands had returned to work.

The union, as representatives of the individual members involved has made every effort to comply with the terms of the grievance procedure but has been balked in each instance by the adamant refusal of the mill management to comply with the terms of its contract.

Numerous arbitrations in cases of this type have been decided both ways: some in favor of the company's position and some in favor of the union's position. There have been instances of reinstatement in the Newberry plant through whose operations this grievance arose and there have likewise been instances in this plant in which the company's action in discharge or discipline of employees has been upheld by the arbitrator. In every instance in which a grievance has arisen, the union feeling itself firmly bound by the terms of its contract has proceeded with the steps for resolving grievances and agreed to arbitration where necessary.

There have been other instances since these grievances arose in which the company has complied with the terms of the contract and proceeded to arbitration. There have been still others in which the company has again arbitrarily refused to follow the procedure outlined in the contract.

The company has acted high-handedly and arbitrarily in this matter and in other matters for the sole purpose of bringing the union into ill repute among the company's employees in Newberry by demonstrating to the rank and file members thereof that the company will abide by the terms of the contract only when and in so far as it sees fit to do so with the result that so far as the rank and file members are concerned the contract is worthless.

This affidavit is given for the purpose of being used in the above styled and numbered case and particularly in the support of the Plaintiff's Motion for Summary Judgment in this matter."

Under the foregoing facts; the Company and the Union both made Motions for Summary Judgment. The Company's motion seeking to have the Complaint dismissed and the Union's Motion seeking to compel the company to arbitrate the discharges.

The Company's Motion was denied and the Union's Motion was granted. This Order was affirmed by the United States Court of Appeals for the Fourth Circuit.

ARGUMENT

In this case, the District Court has held that to enter into the question of the degree of culpability of the various individuals involved would be to enter into the merits of the grievances about which the Union complains. That view has been upheld by the United States Court of Appeals for the Fourth Circuit in affirming the order of the District Court.

This view is undoubtedly correct in that the culpability of the various individuals, if any, is in varying degrees and that in the case of at least two of the individuals involved, there could be none, since they were on leave throughout the period of the disturbance and not even in the City of Newberry.

This Court has decided that the function of the courts is narrowly limited in suits under Section 301, to compel arbitration.

In this connection, attention is invited to the language of the Court in *Steelworkers v. American Manufacturing Company*, 363 U.S. 564, 4 L. Ed. 2d. 1403, 805 Ct. 1343, 40 Labor Cases 66, 628, where the following language is used:

> "... the agreement is to submit all grievances to arbitration, not merely those that a court may deem to be meritorious.—The question is not whether in the mind of a court there is equity in the claim.
>
> Arbitration is a stabilizing influence only as it serves as a vehicle for handling every and all disputes that arise under the agreement.

The collective agreement calls for the submission of grievances in the categories which it describes irrespective of whether a court may deem them to be meritorious. In our role of developing a meaningful body of law to govern the interpretation and enforcement of collective bargaining agreements, we think special heed should be given to the context in which collective bargaining agreements are negotiated and the purpose which they are intended to serve. See *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 468. The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment when it was his judgment and all that it connotes that was bargained for.

The courts therefore have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support in the claim. The agreement is to submit all grievances to arbitration, not merely those the court will deem meritorious. The processing of even frivolous claims may have therapeutic value which those who are not a part of the plant environment may be quite unaware."

The language of this contract in regard to the arbitration of grievances is very broad and there is nowhere any indication that it was ever the intention of the parties to exclude grievances which might arise out of an unauthorized strike, although it is quite apparent that the parties foresaw the possibility of such a strike and, included in the

contract a provision absolving the Union from damages which might be caused by such a strike.

The no strike agreement in this contract imposes on the union only the duty not to authorize a strike and there is nowhere any indication that the agreement to arbitrate should be abrogated by an unauthorized strike.

The parties to this contract are the union and the company and under its terms, the Union has a right to have grievances of its members presented by it, the Union, arbitrated.

The eighteen persons whose grievances the company refused to arbitrate were caught up in a labor disturbance which involved the vast majority of the employees of the company. This strike may have been and probably was the result of unfair labor practices on the part of the company.

There was no evidence before the district court which would permit a determination on such a question. That question was for the arbitrator. Likewise, there was no evidence before the court by which it could determine whether or not the conduct of the eighteen here involved was more heinous or less so than that of the many others who in like circumstances were involved in the work stoppage at Petitioner's mill and were not discharged. That, too, was a matter to be determined by the arbitrator.

All of the ramifications of this labor dispute were not before the lower courts and rightly should not have been. They are matters for the arbitrator.

The Petitioner seeks to have the court rule on the merits of this case, substituting its own interpretation of the contract and the facts as justification for its breach of the contract to arbitrate.

In the instant case the work stoppage involving most of the workers of the Petitioner had been terminated by the efforts of the union, the Respondent, and all operatives were ordered to return to work. The mill had resumed operations and the eighteen persons here involved stood ready and willing to report to work. They were prevented from

doing so after the work stoppage as such was over by the fact of their discharge by the company. There is in this case redress which an arbitrator may order, should he determine that the discharges were unjustified.

The Respondent contends that Petitioner's argument is in fact on the evidence upon which it would have relief before an arbitrator, if these grievances had in fact been arbitrated, and that therefore, Petitioner is wide of the mark since the merit of these discharges was not before the lower court.

Respondent further contends that the questions before the lower courts were, as to the existence of a contract (admitted), the terms of the contract (admitted) and whether the Petitioner should be ordered to comply with the terms of the contract as admitted. The district court found that it should and so ordered, which order has been affirmed by the United States Court of Appeals for the Fourth Circuit.

CONCLUSION

The United States District Court for the Western District of South Carolina and the United States Court of Appeals for the Fourth Circuit in well reasoned opinions have held that the facts of this case bring it within the principles heretofore enunciated by this court which compel arbitration. It is therefore submitted that in the light of the foregoing, Certiorari should be denied by this Court.

Respectfully submitted,

LAW, KIRKLAND & AARON

BY: THEODORE W. LAW, JR.

Attorneys for Respondent.